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UNCLAS SECTION 01 OF 03 JAKARTA 002531

SIPDIS

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SENSITIVE

FOR EAP/MTS AND EB/IPE/EAP
COMMERCE PLEASE PASS USPTO FOR JOELLEN URBAN
DEPT PASS TO USTR FOR KATZ AND GROVES

E.O. 12598: N/A
TAGS: [ETRD](#) [KIPR](#) [PGOV](#) [ID](#)
SUBJECT: INDONESIA: 2006 SPECIAL 301 SUBMISSION

REF: A) State 14937; B) 05 Jakarta 16289

¶1. (SBU) Summary: Local IPR industry representatives now tell us that the IPR enforcement landscape has changed considerably since they made their Special 310 out-of-cycle review (OCR) submissions in December 2005. They now see a more credible and sustained enforcement effort backed up by signals of high-level political will, including President Yudhoyono's personal involvement in a MOU with Microsoft to legalize government software and Police Chief Sutanto's strong directive against piracy. There is clear evidence the U.S. decision to maintain Indonesia on the priority watch list (PWL) during the recent out of cycle review has demoralized key IPR officials at the Ministries of Trade and Justice. We urge Washington agencies to upgrade Indonesia to Watch List status during the 2006 regular Special 301 review. End Summary.

Enforcement Actions

¶2. (SBU) In early January, Indonesia's new and no-nonsense National Police Chief General Sutanto issued a directive to all of Indonesia's 33 regional police chiefs instructing them to step-up enforcement activities in all areas pertaining to optical disc piracy, including retail sales and factory production. The result has been a dramatic increase in police raids across the country, and particularly in major urban centers. In Jakarta, the metropolitan police, working closely with the local Motion Pictures Association (MPA) representative, made good on their promise to conduct regular monthly raids following the successful November 2005 raids against some of Jakarta's most notorious malls (Ratu Plaza, Mangga Dua and Harko Glodok). Since November, they have conducted repeat raids at those same centers as well as new raids in other areas. In February 2006, they raided 65 shops and, with contributions from earlier raids, have collected over 6 tons of pirated optical discs that now await destruction at an appropriate high-level event. A local Business Software Alliance (BSA) representative claims that overall piracy is down by as much as 10 percent in Jakarta and 50 percent in Surabaya.

¶3. (SBU) The police have also conducted recent factory raids. On February 9 and 10, with MPA support, police raided 2 factories in Tangerang where they seized three CD and four DVD production lines and roughly 18,000 pirated optical discs. The local MPA representative says his organization and the police plan to raid an additional 8 malls and a major factory by the end of March. According to the MPA representative, the police said that following General Sutanto's directive, they no longer require MPA

support (usually for transportation and meals) to organize and conduct raids. Sutanto has now turned his attention towards creating an anti-piracy film in collaboration with a local recording industry association and Indonesia Customs.

14. (SBU) On a February 22 visit to Jakarta, a Singapore MPA representative told us the recent GOI actions on IPR are "the most remarkable developments in the past six years." He also expressed concern that the recent decision to keep Indonesia on the PWL had been based on dated information that does not accurately reflect what he described as a new, credible and sustained enforcement campaign, supported by political will from the very top. He also expressed fear that the OCR decision would dampen current momentum, and said he would recommend to MPA and the IIPA that they revise earlier recommendations and support upgrading Indonesia to Watch List during the upcoming regular Special 301 review. Local BSA and IFPI reps say they support this view and will also press for an upgrade to the Watch List.

Optical Disc Regulations (ODR)

15. (SBU) Local IPR industry reps tell us they now believe that the list of roughly 22 optical disc factories in the GOI's database accounts for most of the factories known to exist. They note that earlier estimates of as many as 50-60 factories were based largely on rough estimates, and some suspected factories may have closed or moved. The interagency ODR monitoring team continues to build capacity through its participation in USAID funded trainings and awareness campaigns. It is also making steady progress towards registering factories (17 of 22 are now registered), supplying SID codes (the 17 registered factories now have

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SID codes), and conducting regular inspections. The monitoring group's head, Tony Tanduk, recently told us that his team is having better success in entering factories with greater police support following General Sutanto's directive. Still, the monitoring team consists of an ad hoc group of officials who take time-off from other responsibilities to work on ODR implementation and rely heavily on industry support. Moving forward, it will be important to encourage the GOI to provide the team with a regular budget and staff.

Arrests, Prosecutions and Convictions

16. (SBU) In early February, Jakarta courts convicted six pirate software vendors to jail terms of roughly 1 year each. Police raids on vendors in February alone resulted in some 50 arrests, and police netted another 17 during the recent factory raids, including one major distributor. MPA estimates that the Attorney General's Office now has some 220 IPR cases pending. In general, prosecutions and convictions still remain weak, a reflection of the very low capacity of Indonesia's judicial system. MPA tells us that, with the police now making more concerted efforts, the next focus of effort should be on the Attorney General's Office, which is responsible for prosecuting IPR cases.

Other Developments

17. (SBU) On January 13, the Ministry of Information and Communications Technology and Microsoft signed an MOU on legalizing all GOI Microsoft software. President Yudhoyono, on his own initiative, personally led the effort to sign the MOU, following his 2005 meeting with Microsoft Chairman Bill Gates. It is estimated that 90 percent of GOI computers use pirated versions of Microsoft operating systems and software.

18. (SBU) A Presidential Decree to establish a National Task

Force is finalized and still awaits President Yudhoyono's signature. Bureaucracy, higher priorities, and a logjam of pending Presidential decisions seem to be the main impediments to its passage. While the Task Force should facilitate greater interagency cooperation, strong signals from the top, such as the Microsoft MOU and Sutanto's directive, are equally important. The regional MPA representative recently told us that the Task Force was not the highest priority, and credible enforcement and reductions in the availability of pirated products was more important.

¶9. (SBU) Finally, as reported in ref b, we continue to hear reports from a number of IPR attorneys that Indonesia's Commercial Court continues to perform well on a healthy volume of civil IPR cases (mostly related to trademark disputes). Again, we should consider this a significant achievement given the overall weak state of Indonesia's judiciary.

Comment and Recommendation

¶10. (SBU) The IPR enforcement landscape has changed since we transmitted Ref B and engaged the GOI in a digital video conference on January 17. Industry representatives, who a few months back doubted the motives behind raids, now see a more credible and sustained effort and positive momentum. Enforcement has been the weak link in Indonesia's IPR efforts for years, and coupled with other positive developments, we continue to believe there is ample progress to warrant an upgrade to Watch List status.

¶11. (SBU) From a longer-term perspective, the last two Indonesian administrations have made unmistakable progress on OD piracy issues since USTR placed it the PWL in May 2001:

--Parliament passed a strengthened Copyright Law in July 2002 that went into force in July 2003.

--Former President Megawati Sukarnoputri signed a Government Regulation on Optical Discs in October 2004. In terms of legal hierarchy, Government Regulations are the highest form of GOI regulation commonly used.

--The former Minister of Trade and Industry issued

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complementing Ministerial Regulations on optical discs, also in October 2004.

--With assistance from the U.S., the Ministry of Industry formed and trained OD monitoring teams in 2005. Although there is room for more progress, these teams have registered more than three quarters of the OD factories known to exist in Indonesia, and are actively enforcing the ODRs.

--As noted above, the National Police Chief issued a directive in January 2006 to Indonesia's 33 regional police chiefs instructing them to step-up enforcement activities in all areas pertaining to optical disc piracy.

--Also as noted above, police in Jakarta and other major Indonesian cities have dramatically increased the number of raids against OD vendors and factories since November 2005.

¶12. (SBU) Although they would admit that Indonesia still has a way to go, Indonesian IPR officials believe adamantly that they have made impressive progress over the last few years towards improving Indonesia's IPR climate, and we agree. In particular, the IPR enforcement progress over the past four months has come in the face of competing law enforcement priorities and financial and political opposition from illegal OD producers and vendors. For these reasons, the recent USG decision to retain Indonesia on the

PWL stunned and demoralized our GOI IPR contacts. Several of our close GOI interlocutors have told us flatly that "they feel like giving up" following the OCR decision. The Ministry of Justice Director General for IPR, upon hearing of our decision, cancelled his planned February 16 meeting with USTR Director for Southeast Asia David Katz. We are frankly concerned that the downturn in our IPR relationship could reduce the effectiveness of the USG-funded senior IPR technical advisors we are placing with the ODR monitoring team and police.

¶13. (SBU) The bottom line is that the proponents of IPR protection within the GOI and Indonesian society are a small and embattled group, and they face off daily against many strong enemies and competing law enforcement priorities. As we argued in Ref B, one of the most effective ways we can support this group is by upgrading Indonesia to Watch List status, and we believe this remains our most effective policy choice moving forward.

PASCOE